CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1918

No. [redacted]312

LOUISVILLE & JEFFERSONVILLE BRIDGE COMPANY

vs.

THE UNITED STATES OF AMERICA.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

FILED DECEMBER 8, 1917.

(26,251)

(26,251)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 784.

LOUISVILLE & JEFFERSONVILLE BRIDGE COMPANY

vs.

THE UNITED STATES OF AMERICA.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 15, 1917.

1 Filed Nov. 22, 1917. Wm. C. Cochran, Clerk.

United States Circuit Court of Appeals, Sixth Circuit.

No. 3016.

LOUISVILLE AND JEFFERSONVILLE BRIDGE COMPANY, Plaintiff in Error,

vs.

UNITED STATES OF AMERICA, Defendant in Error.

Error to the District Court of the United States for the Western District of Kentucky.

Submitted October 10, 1917; Certified November 16, 1917.

Before Knappen and Denison, Circuit Judges, and McCall, District Judge.

Per Curiam:

In the court below, the railroad was found guilty upon each of ten counts for operating a train without having its air brakes under that engine control required by the Safety Appliance Act, as amended March 2, 1903. Upon the trial, a jury was waived and the facts were stipulated. A detailed map was also agreed upon as a part of the stipulation; but for convenience, the main facts appearing by the map and from the pleadings and the stipulation are united in the following statement:

At Louisville, the Big Four Railroad, coming from the north, connects with the Chesapeake & Ohio, coming from the south. The Louisville & Jeffersonville Bridge Company is a common carrier, engaged in interstate commerce, and constitutes the connection between, and the joint terminal of, the other two railroads. It does no other business. It will be called the defendant. It maintains a terminal, switching and transfer yard, extending east and west over three city blocks, from Hancock Street west past Jackson and Preston Streets, to Floyd Street, and, for part of its length, extending north and south two city blocks, from Main Street north past Washington Street, to Water Street, running east
2 and west on the Ohio River bank. The extreme distance east and west is about 1,800 feet, and north and south about 700 feet. Defendant's main track enters this territory from the east and passes westerly and northwesterly, leaving the above-described yard space at the northwest corner. During its entire distance through the yard, this main track has, on one side or the other, or both sides, from 15 to 25 approximately parallel tracks, connected with the main

track by leads in the usual manner. The points of the switch from the main track to the last lead track, as we go to the west, are in Water Street at the west line of Floyd Street, and this point we fix as being the exact northwest corner of the yard. At a point 85 feet further northwest, defendant's main line track joins an Illinois Central transfer track in Water Street, and with that, leading westerly, forms the continuous main line over which through freight and passenger trains of the Big Four are operated in both directions through the yard and westerly along Water Street. The tracks in Water Street east of Floyd Street are Illinois Central and Louisville & Nashville transfer tracks and an engine house track of defendant; but C. & O. main line through trains are operated in both directions along Water Street over the Illinois Central and Louisville & Nashville tracks, both east and west of Floyd Street.

Directly west of the defendant's yard and across Floyd Street lies an Illinois Central yard. If an engine desires to move from defendant's yard to the Illinois Central yard, it must, and it always does, go northwesterly about 100 feet beyond the corner of and outside defendant's yard, until it passes the switch connecting defendant's main line with the Illinois Central transfer track and enters on the latter; then, this switch having been thrown, it proceeds back eastwardly along this latter track on Water Street, a distance of about 200 feet, until it passes the switch connecting with the Illinois Central side track leading to the Illinois Central yard; then, this switch having been thrown over, the engine proceeds forward on this Illinois Central side track southwesterly for a distance of about 150 feet, where it enters that yard. Any train or string of cars, transferred from one yard to the other, necessarily takes the same course. The distance which the westernmost end of such train will traverse the Illinois Central track west of the switch by which it enters thereon will be measured by the length of the train. In every instance, it will go only the one train length necessary to get its rear or easterly end past that switch which, according to its setting, permits
3 the train to enter from the east from defendant's main track or to again leave toward the east on the Water Street transfer track. In the same way, the easternmost end of such train will pass over Illinois Central and Louisville & Nashville tracks easterly from Floyd Street only as far as necessary to get the then rear or westerly end past the switch which, upon being set therefor, will permit the train to leave those tracks and pass southwesterly into the Illinois Central yard.

The trains or strings of cars forming the subjects of the several counts varied in number from 12 to 32. The parties agreed upon the transaction named in the first count as typical of the others. Upon this occasion, 26 cars which had come into defendant's yard from the Big Four or the C. & O. and which were for delivery to the Illinois Central, had been, by suitable operations, assembled (without caboose) in a "train" or "string" or "drag" in defendant's yard (whether upon the main or a side track does not appear). The east end was near Hancock Street, at the easterly end of the yard; the west end was just east of Preston Street. Its length was about 1,100

feet. An engine and tender were at the easterly end. The air hose was not coupled between any two of the cars, and the air brakes on the cars were therefore not under control from the engine. Defendant's yard foreman took his position in a tower 15 feet high at about the corner of Floyd and Water Streets, and by his signals directed all the subsequent events. The cars were then moved northwesterly out of the yard and westerly along Water Street until the pushing engine had passed the switch which was 85 feet beyond the northwest corner of the yard, and the westernmost car had traveled about 700 feet upon defendant's track in its yard (how much upon the main track does not appear) about 100 feet on defendant's track and outside of its yard and about 1,100 feet upon that portion of the Illinois Central transfer track used as main line by the Big Four and the C. & O. The switch which the engine had just passed over being appropriately reset, and several switches among the easterly Water Street tracks being properly lined up, the engine proceeded to the east, pulling its cars and passing over the Illinois Central transfer tracks and Louisville & Nashville transfer tracks in Water Street (being part of the track used by the C. & O. for its through main line trains), until it had traveled a distance of about 1,300 feet and the rear car cleared that switch, 50 feet east of Floyd Street, which con-
4 nected with the Illinois Central yard track. This switch being then properly reset, the engine pushed the cars westwardly into the Illinois Central yard, putting part of them upon one track, and, because that track was too short, the remainder of them upon another track.

During this whole movement, the engine or some one of the cars was upon or immediately adjacent to one of the three switches over which it moved, and was within 200 feet of the yard foreman directing its movements; but this foreman did not control main line movements so as to protect these cars and through trains against each other.

The movement was a transfer from one yard to another. The switching operations incidental to selecting and assembling the 26 cars in a string had been finished before this transfer movement was commenced, and the switching incidental to breaking up the string and distributing the cars according to their further intended transportation did not begin until after the transfer movement into the Illinois Central yards had been finished (except so far as breaking it up into two parts was necessary to get it into the Illinois Central yard).

Owing to the proximity of the lead line switch at the northwest corner of the yard to the Illinois Central tracks, it was necessary that any string of engine and cars, more than 85 feet in length, should be pushed or pulled on to the Illinois Central track west of Floyd Street for the whole of its excess over that length, whenever it was desired to shift such string between the main track in the west part of the yard and any one of the four side tracks next north thereof, or, (if the string was more than 200 feet long) between any two of such side tracks.

From the point of connection between defendant's main line and

the Illinois Central track and going west on the latter track, there is an ascending grade of from one to two per cent. for about 800 feet. To get momentum to ascend this grade, the 26 cars, while passing through the yard and before entering on the Illinois Central track, had been given a speed of 15 miles per hour.

All street crossings were protected by gates.

For greater certainty, the agreed map, which has been generally described, is attached hereto and made part hereof.

Upon these facts, it is contended by the government that such a transfer from one yard to another exposes the crew and the public to main line dangers which it was the purpose of the law to avoid and that the movement is not a switching operation but is the "running of a train" * * * "upon its line" within the act. The defendant contends that to require the air hose to be coupled 26 times would involve unnecessary danger to the crew; that there was no exposure to main line dangers, except as there would have been if only that part of the main line within the yard had been used; that there was no use of the main track within or without the yard except as it is common to use for switching purposes those portions of the main line in a yard and projecting therefrom; that this "train" never started out "for a run or trip along the road," but intended to stop as soon as it got outside the yard, and had no purpose except to get itself over and diverted by the two switches each of which was within 100 feet of the yard; and that the operation was dominantly a switching movement across Floyd Street.

Upon these facts, we desire the instruction of the Supreme Court for our proper decision of the following question of law arising thereon:

Does the Safety Appliance Act, as amended, when properly interpreted, require that 85 per cent. of the train air brakes shall be coupled and under engine control, when making such a transfer as that of the 26 cars whose movement has been described?

LOYAL E. KNAPPEN,
ARTHUR C. DENISON,
JNO. E. McCALL,
Dist. Judge,
Judges of the Circuit Court of Appeals for the Sixth Circuit.

(Here follows diagram marked page 6.)